IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 57 of 1985
with
SPECIAL CIVIL APPLICATION No 6436 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

H.H. PANCHOLI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 57 of 1985
MR AVINASH K MANKAD for Petitioner
Ms MANISHA LAVKUMAR, AGP for Respondent No. 1, 2

2. Special Civil ApplicationNo 6436 of 1991
MR AVINASH K MANKAD for Petitioner
Ms MANISHA LAVKUMAR, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/04/2001

COMMON ORAL JUDGEMENT

In these petitions under Article 226 of the Constitution, a retired Executive Engineer in the Irrigation Department of the State Government has challenged the two orders of penalty passed against the petitioner after his retirement and also the inaction on the part of the respondent authorities in not paying the petitioner all his retiral dues.

2. The facts are in a narrow compass.

2.1 The petitioner was appointed as an Overseer in the State Government service in the year 1947 and was promoted as Deputy Engineer (subsequently redesigned as Deputy Executive Engineer) in the year 1958. The petitioner was thereafter promoted as Executive Engineer on 31.12.1977. The petitioner ultimately retired on 30.4.1982.

2.2 Before the petitioner retired, a departmental inquiry was initiated against him on 5.3.1982 regarding excess payment of Rs.2310/- to the workers. At the conclusion of the said inquiry (hereinafter referred to as `the first inquiry') the penalty of recovery Rs.1736/was imposed on the petitioner by order dated 14.8.1984. Special Civil Application No. 57 of 1985 challenges the said penalty order dated 14.8.1984 in the first inquiry.

2.3 After his retirement, another inquiry was initiated against the petitioner on 19.2.1985. At the conclusion of this inquiry (hereinafter referred to as `the second inquiry'), the Government passed the impugned order dated 9.8.1991 reducing the pension by Rs.200/- per month for a period of five years. Special Civil Application No. 6436 of 1991 challenges the said penalty order dated 9.8.1991 in the second inquiry.

2.4 It appears that in the meantime, upon his retirement the petitioner was paid 100% provisional pension and a part of the gratuity amount was also paid, but the balance amount was withheld on account of the pendency of the inquiries.

3. The learned counsel for the petitioner has challenged the aforesaid orders of penalty and has also prayed for payment of interest to the petitioner for the delay in payment of the retiral benefits mainly on the ground that both the inquiries were initiated after a long delay of almost 15 years after the occurrence of the

events.

4. On the other hand, Ms Manisha Lavkumar, learned AGP has opposed the petitions and has submitted that the question whether the delay in initiation of proceedings was reasonable or unreasonable is a question of fact which would not be gone into by this Court in a petition under Article 226 of the Constitution especially when the petitioner does not appear to have raised this defence at the inquiry. The petitioner defended his action and faced the charges on merits and, therefore, it is not open to the petitioner to raise this plea at this belated stage in these proceedings.

5. Having heard the learned counsel for the parties, it appears to the Court that when the matter is governed by the provisions of Rule 189A of the Bombay Civil Services Rules, the same will have to be considered while deciding the controversy. Rule 189A of the BCSR reads as under :-

"189A. The Governor reserves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.

Provided that -

(a) such departmental proceeding, it instituted while the Government servant was in service whether before his retirement or during his re-employment shall after the final retirement of the Government servant be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the Government servant had continued in service:

(b) such departmental proceeding if not institute while the Government servant was in service, whether before his

retirement or during his re-employment -

(i) shall not be instituted save with the sanction of the Governor.

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(c) ... ...

(d) the Gujarat Public Service Commission shall be consulted before final orders are passed.

Explanation : For the purpose of this rule -

(a) departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date."

6. As far as the first inquiry is concerned (which resulted into the impugned penalty order dated 14.8.1984 for recovery of Rs. 1736/- from the petitioner), it was initiated on 5.3.1982 i.e. while the petitioner was in service. Hence, the said departmental proceeding could be continued and concluded by the authority in the same manner as if the petitioner was continued in service, which is the effect of proviso (a) to Rule 189-A. The learned AGP appears to be justified in contending that since the question whether the said inquiry was initiated within a reasonable time or not was a question of fact and since the petitioner had defended himself on merits at the said inquiry, it is not open to the petitioner to

raise the plea of delay in initiation of the proceedings in these petitions under Article 226 of the Constitution. If the petitioner had raised such a plea, the department could and would have led evidence to meet with such grievance about delay in initiation of the inquiry. The Court, therefore, does not find any merit in the challenge to the penalty order dated 14.8.1984 impugned in Special Civil Application No. 57 of 1985 which merely provided for recovery of Rs.1736/- from the petitioner.

7. Coming to the penalty order dated 9.8.1991 in the second inquiry, the same was the final outcome of a departmental proceeding which was initiated by charge sheet dated 19.2.1985. Explanation (a) to Rule 189-A clearly provides that departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government Servant or pensioner. The chargesheet was thus issued to the petitioner on 19.2.1985 i.e. after the petitioner's retirement on 30.4.1982. Accordingly the initiation of such proceedings could be said to be legal and valid only if the Government can make out that the petitioner's case was covered by the provisions of proviso (b) to Rule 189-A. The said proviso imposes three conditions, the important condition being that such departmental proceeding, if not instituted while the Government servant was in service, shall not be in respect of any event which took place more than 4 years before such institution. In this view of the legal position, the petitioner could not have been required to face a chargesheet in respect of any event which took place prior to 19.2.1981 (calculating 4 years backwards from 19.2.1985). Admittedly, the departmental proceeding in question was instituted in respect of certain alleged acts of irregularities on the part of the petitioner in respect of the event which took place in the year 1967. That was more than 17 years prior to the issuance of the chargesheet to the petitioner. On this short ground alone, the impugned order dated 9.8.1991 in the second inquiry imposing the penalty of reduction in pension is required to be quashed and set aside and Special Civil Application No. 6436 of 1991 challenging the said order deserves to be allowed.

8. The only question which now remains is whether the petitioner is entitled to be paid any interest for the delay in payment of his retiral benefits. The petitioner retired way back on 30.4.1982.

The learned AGP has submitted that in the first

place these two petitions challenging the order of penalty were filed by the petitioner and were pending for final hearing. Secondly, it is submitted that according to the submissions made in the report which was prepared pursuant to this Court's direction dated 20.11.1991 in Special Civil Application No. 6436 of 1991, the Government had informed the petitioner on 5.8.1992 requesting him to comply with certain formalities as the Director of Pension & Provident Fund had raised certain queries, but inspite of about 23 reminders, the petitioner did not care to solve the queries raised by the Director of Pension and Provident Fund. Hence, the respondents were unable to finalise the petitioner's pension case without getting any reply from the petitioner.

9. Since the copy of the said report was not made available to the petitioner earlier, Mr Mankad, learned counsel for the petitioner makes a grievance that the petitioner had no opportunity to meet with any such allegation about the alleged non-cooperation. He further submits that when the petitioner is interested in getting his money, it is not likely that the petitioner would not cooperate with the authorities for finalization of the pension papers. He further submits that in any view of the matter, the balance amount payable by the respondents to the petitioner did remain with the respondent authorities and, therefore also, there could be no justification for denying the interest on the said amount.

The learned AGP, however, clarified that the petitioner was already paid 100% provisional pension and also a part of the gratuity and the balance amount worked out at Rs. 53,736/- was paid to the petitioner in March, 2001. Without prejudice to the contention that no interest should be paid to the petitioner, the learned AGP has submitted that in any case interest should not be awarded at a rate higher than 9% and in support of the said submission has relied upon the decision of the Apex Court in S. Kaushnuma Begum vs. New India Assurance Co. Ltd., AIR 2001 SC 485 and particularly on the discussion contained in para 5 thereof.

10. Having heard the learned counsel for the parties, it appears to the Court that there is some justification in the grievance being made by Mr Mankad, learned counsel for the petitioner that even if the petitions challenging the orders of penalty were pending, the respondents should have calculated the pension amount as per their own calculations and paid the same to the petitioner

without waiting for the outcome of the petitions. In view of the fact that the petitioner did not have an opportunity to meet with the respondents' case that the petitioner was not cooperating with the Government for finalization of his case papers and also considering the fact that the money did remain with the respondents, the Court sees no justification for denying the petitioner interest for the delayed payments. At the same time, the Court finds justification in the submission made by the learned AGP that interest should not be awarded at a rate higher than 9% p.a.

11. In the result, Special Civil Application No. 57 of 1985 is dismissed. Rule is discharged with no order as to costs.

12. Special Civil Application No. 6436 of 1991 is allowed. The impugned order dated 9.8.1991 imposing the penalty of reducing in the petitioner's pension is quashed and set aside. Initiation of the departmental inquiry pursuant to the chargesheet dated 19.12.1985 is declared illegal and void ab initio. The respondents shall refund the amount of pension reduced pursuant to the above order, to the petitioner. The respondents shall also pay the petitioner interest at 9% p.a. on the amount of Rs.53,736/- from the date of retirement till the date of payment, which shall be paid within two months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier. The respondents shall also make the consequential payment of the amount of pension deducted so far i.e. Rs.200/per month for a period of five years pursuant to the penalty order dated 9.8.1991 as expeditiously as possible and within the aforesaid period of two months. If the aforesaid amount is refunded to the petitioner within the aforesaid time limit of two months, no interest shall be payable by the respondent, but if the amount is not paid within the aforesaid time limit, the petitioner shall be paid interest at the rate 9% p.a. from the date/s on which the amount/s was/were deducted by implementing the penalty order dated 9.8.1991. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
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